

Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
(602) 530-8000

Robert J. Itri (State Bar No. 10938)
rji@gknet.com
Flynn P. Carey (State Bar No. 025399)
flynn.carey@gknet.com
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
Facsimile: (602) 530-8500

Gregory M. Krakau (Admitted pro hac vice)
gkrakau@lpslaw.com
LELAND, PARACHINI, STEINBERG, MATZGER
& MELNICK, LLP
199 Fremont Street – 21st Floor
San Francisco, California 94105
Telephone: (415) 957-1800
Facsimile: (415) 974-1520

Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

ThermoLife International, LLC,

Plaintiff/Counterdefendant,

v.

Gaspari Nutrition, Inc.,

Defendant/Counterclaimant.

No. CV 11-01056-PHX-NVW

**ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT AND
FIRST AMENDED
COUNTERCLAIM**

Defendant/Counterclaimant, Gaspari Nutrition, Inc. (“GNI”), by and through its undersigned counsel, for its answer to Plaintiff/Counterdefendant’s First Amended Complaint (“FAC”), admit, deny, and allege as follows:

1. Denies every allegation of the FAC, except as hereinafter expressly admitted.

NATURE OF ACTION

2. Answering paragraph 1 of the FAC, admits that Plaintiff has brought claims, states that the FAC is a document that speaks for itself, and denies any characterization as to the content or effect of that document that is inconsistent with the document itself. Further answering paragraph 1 of the FAC, denies that ThermoLife

1 brings its claims in good faith, nor for the reasons stated in that paragraph. Further
2 answering paragraph 1, states that GNI's advertisements and the FDA's conclusions are
3 items that speak for themselves and denies any characterization as to the content or effect
4 of those items which are inconsistent with the items themselves. Finally, Defendant
5 denies the remaining allegations in the paragraph and denies it is liable to Plaintiff on any
6 basis.

7 3. Denies the allegations of paragraph 2 of the FAC.

8 4. Answering paragraph 3 of the FAC, admits that competition in the
9 supplement industry is fierce, is without knowledge or information sufficient to admit or
10 deny the research and development goals of each company in the industry nor the methods
11 (legal or illegal) that are employed by each company, states that compliance or non-
12 compliance with the Dietary Supplement Health and Education Act of 1994 ("DSHEA")
13 is a legal determination, and not subject to admission or denial in answering a complaint,
14 denies the remaining allegations in the paragraph, and denies it is liable to Plaintiff on any
15 basis.

16 5. Denies the allegations of paragraph 4 of the FAC.

17 6. Answering the allegations of paragraph 5 of the FAC, denies that
18 GNI has falsely advertised its products, denies that it has taken actions motivated solely
19 by ill-will and spite to injure ThermoLife, denies GNI has routinely disparaged
20 ThermoLife nor Mr. Kramer, is without knowledge or information sufficient to admit nor
21 deny whether Mr. Kramer is a major consumer of dietary supplements (but suspects he
22 probably is), denies all other allegations in the paragraph, and denies it is liable to Plaintiff
23 on any basis.

24 7. Denies the allegations of paragraph 6 of the FAC, including
25 Plaintiff's stated motivation for bringing the suit.

26 **PARTIES, JURISDICTION, AND VENUE**

27 8. Admits the allegations of paragraphs 7, 8, 9, 10, 11, and 12 of the
28 FAC.

9. Answering paragraph 13 of the FAC, admits that venue is proper,
denies that events or omissions occurred that give rise to any of ThermoLife's claims, and

1 denies it is liable to Plaintiff on any basis.

2 **FACTUAL ALLEGATIONS**

3 10. Answering paragraphs 14, 15, 16, 17, and 18 of the FAC, is without
4 knowledge or information sufficient to respond to this paragraph, and denies it is liable to
5 Plaintiff on any basis.

6 11. Answering paragraph 19 of the FAC, is without knowledge or
7 information sufficient to respond to the vague statements in the paragraph regarding the
8 industry and unnamed “supplement companies”, denies that ThermoLife develops unique
9 products and formulas, denies ThermoLife fully discloses to the public, denies all other
10 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

11 12. Answering paragraph 20 of the FAC, is without knowledge or
12 information sufficient to respond to ThermoLife’s representations about its intellectual
13 property, notes that the effect of patents is a legal determination, and not subject to
14 admission or denial response to a complaint, and therefore denies same, denies all other
15 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

16 13. Answering paragraph 21 of the FAC, denies that ThermoLife has
17 taken a lead role in anything other than blatant self-promotion, denies all other allegations
18 in the paragraph, and denies it is liable to Plaintiff on any basis.

19 14. Denies the allegations of paragraph 22 of the FAC.

20 15. Answering paragraph 23 of the FAC, admits that Mr. Kramer calls
21 himself “Truth Speaker,” states that Mr. Kramer is known by other names and nicknames
22 on the Internet, and denies it is liable to Plaintiff on any basis.

23 16. Admits the allegations of paragraph 24 of the FAC.

24 17. Answering paragraph 25 of the FAC, admits that the FDA regulates
25 dietary supplements under DSHEA, is without knowledge or information sufficient to
26 admit nor deny whether ThermoLife’s supplements are DSHEA-compliant.

27 18. Answering paragraph 26 of the FAC, states that 25 U.S.C. § 350(b) is
28 a statute that speaks for itself, denies any characterization as to the content or effect of that
statute which is inconsistent with the statute itself, denies all other allegations in the
paragraph, and denies it is liable to Plaintiff on any basis.

1 19. Answering paragraph 27 of the FAC, states that it is without
2 knowledge or information sufficient to determine the extent to which the FDA reviews
3 each and every dietary supplement before it is sold nor to determine what each and every
4 person who sells or markets dietary supplements is required to do.

5 20. Admits the allegations of paragraph 28 of the FAC.

6 21. Admits the allegations of paragraphs 29 and 30 of the FAC.

7 22. Answering paragraph 31 of the FAC, admits that GNI employees are
8 frequent contributors to the BodyBuilding.com internet message board and forums, upon
9 information and belief, states that some consumers of GNI and ThermoLife rely on the
10 message boards and forums and visit the boards in order to research dietary supplements,
11 denies all other allegations in the paragraph, and denies it is liable to Plaintiffs on any
12 basis.

13 23. Admits the allegations of paragraph 32 of the FAC.

14 24. Denies the allegations of paragraph 33 of the FAC.

15 25. Answering paragraph 34 of the FAC, states that the Washington Post
16 article is an article that speaks for itself, denies any characterization of the article which is
17 inconsistent with the article itself, reserves all rights to challenge both the authenticity and
18 accuracy of the article attached to the FAC as Exhibit 1, denies all other allegations in the
19 paragraph, and denies it is liable to Plaintiff on any basis.

20 26. Answering paragraph 35 of the FAC, states that the Article entitled
21 “Steroids” is an article that speaks for itself, denies any characterization of the article
22 which is inconsistent with the article itself, reserves all rights to challenge both the
23 authenticity and accuracy of the article attached to the FAC as Exhibit 1, denies all other
24 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

25 27. Denies the allegations of paragraph 36 of the FAC.

26 28. Admits the allegations of paragraph 37 of the FAC.

27 29. Answering the allegations of paragraph 38 of the FAC, admits that
28 GNI marketed Novadex XT as a dietary supplement, states Plaintiff’s interpretation of
what certifying DSHEA-compliance is a legal determination, not subject to admission nor
denial in a complaint, and therefore denies same, denies all other allegations in the

1 paragraph, and denies it is liable to Plaintiff on any basis.

2 30. Answering paragraph 39 of the FAC, admits Novedex XT contains
3 an aromase inhibitor, admits Novadex XT was marketed as a testosterone booster and
4 affirmatively states Novadex XT was primarily marketed as an anti-estrogen/anti-
5 aromatase product to minimize the production of any and all estrogens in the body, denies
6 all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

7 31. Answering paragraph 40 of the FAC, denies Plaintiff's allegation
8 "ATD is not naturally occurring and part of the food supply," is without knowledge or
9 information sufficient to form a belief concerning the when ATD was sold as a dietary
10 supplement, and therefore denies same.

11 32. Answering paragraphs 41, 42, 43, 44, 45, and 46 of the FAC, states
12 that the FDA formal action is a document that speaks for itself, denies any
13 characterization of the action which is inconsistent with the action itself, reserves all rights
14 to challenge both the authenticity and accuracy of the action attached to the FAC as
15 Exhibit 2, affirmatively states that GNI elected to not challenge the FDA's formal action,
16 denies all other allegation in the paragraphs, and denies it is liable to Plaintiff on any
17 basis.

18 33. Further answering paragraphs 45 and 46 of the FAC, states that the
19 allegations contained in those paragraphs are legal conclusions, not subject to admission
20 or denial in a complaint, and therefore, denies same.

21 34. Answering paragraph 47, admits that GNI stated that Novedex XT
22 was DSHEA-compliant, admits that GNI stated that materials in Novedex XT are
23 naturally occurring, admits that GNI represented Novedex XT is safe, denies all other
24 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

25 35. Answering paragraph 48 of the FAC, states that the FDA's findings
26 speak for themselves, denies any characterization of the FDA's findings which are
27 inconsistent with the findings themselves, affirmatively states that GNI elected to not
28 challenge the FDA's formal action, denies that Novedex XT has several potentially
serious side effects, denies all other allegations in the paragraph, and denies it is liable to
Plaintiff on any basis.

1 36. Answering paragraph 49 of the FAC, states that the Press Release is a
2 document that speaks for itself, denies any characterization of the document which is
3 inconsistent with the document itself, denies all other allegations in the paragraph, and
4 denies it is liable to Plaintiff on any basis.

5 37. Answering paragraph 50 of the FAC, admits that GNI announced a
6 recall on October 7, 2010, denies all other allegations in the paragraph, and denies it is
7 liable to Plaintiff on any basis.

8 38. Admits the allegations of paragraph 51 of the FAC.

9 39. Answering paragraph 52 of the FAC, states that the advertisement is
10 a document that speaks for itself, denies any characterization of the document which is
11 inconsistent with the document itself, denies any allegation that calls into question the
12 safety of GNI's products, denies all other allegations in the paragraph, and denies it is
13 liable to Plaintiff on any basis.

14 40. Answering paragraph 53 of the FAC, states that any Internet
15 advertising conducted in relation to Novedex XT speaks for itself, denies any
16 characterization of advertisement which is inconsistent with the advertisement itself,
17 denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any
18 basis.

19 41. Answering paragraph 54 of the FAC, states that the Novedex XT
20 label is a document which speaks for itself, denies any characterization of the label which
21 is inconsistent with the label itself, denies all other allegations in the paragraph, and
22 denies it is liable to Plaintiff on any basis.

23 42. Answering paragraph 55 of the FAC, states that the advertisement is
24 a document that speaks for itself, denies any characterization of the document which is
25 inconsistent with the document itself, denies all other allegations in the paragraph, and
26 denies it is liable to Plaintiff on any basis.

27 43. Answering paragraph 56 of the FAC, states that the advertisement is
28 a document that speaks for itself, denies any characterization of the document which is
inconsistent with the document itself, denies all other allegations in the paragraph, and
denies it is liable to Plaintiff on any basis.

1 44. Answering paragraph 57 of the FAC, admits that GNI provided
2 advertisements to third parties who sold Novedex XT through their websites, admits GNI
3 no longer advertises Novedex XT, states that it is without knowledge or information
4 sufficient to form a belief as to what unnamed “third party internet websites” include on
5 their website or where they obtained their advertisements and therefore denies same,
6 denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any
7 basis.

8 45. Answering paragraph 58 of the FAC, states it is without knowledge
9 or information sufficient to form a belief as to what American Lifestyle advertised and
10 sold and therefore denies same, states that the advertisement is a document that speaks for
11 itself, denies any characterization of the advertisement which is inconsistent with the
12 advertisement itself, denies all other allegation in the paragraphs, and denies it is liable to
13 Plaintiff on any basis.

14 46. Answering paragraphs 59, 60, and 61 of the FAC, states that the
15 advertisement is a document that speaks for itself, denies any characterization of the
16 advertisement which is inconsistent with the advertisement itself, denies any and all
17 allegations that any advertising created by GNI is “false” or “misleading to consumers,”
18 denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any
19 basis.

20 47. Answering paragraph 62 of the FAC, states it is without knowledge
21 or information sufficient to form a belief as to what Astro Nutrition advertised and sold
22 and therefore denies same, states that the advertisement is a document that speaks for
23 itself, denies any characterization of the advertisement which is inconsistent with the
24 advertisement itself, denies all other allegation in the paragraphs, and denies it is liable to
25 Plaintiff on any basis.

26 48. Answering paragraph 63 of the FAC, state that the allegations in this
27 paragraph fail to cite any specific statements with any specificity, making it impossible for
28 Defendant to respond with any specificity, and therefore, denies same. To the extent that
statements were made concerning Novedex XT, those statements speak for themselves,
Defendant denies any characterization of the statements which are inconsistent with the

1 statements themselves, denies all other allegations in the paragraph, and denies it is liable
2 to Plaintiff on any basis.

3 49. Answering paragraph 64 of the FAC, admits that Daniel Pierce uses
4 the screen name “deserusan”, states that the posting on healthknowledge.com is a posting
5 that speaks for itself, denies any characterization of the posting that is inconsistent with
6 the posting itself, denies any and all allegations that any statements by Mr. Pierce are
7 “false and/or misleading to consumers,” denies all other allegations in the paragraph, and
8 denies it is liable to Plaintiff on any basis.

9 50. Answering paragraph 65 of the FAC, denies that Pierce posted to
10 BodyBuliding.com, and therefore, denies all allegations in the paragraph, and denies it is
11 liable to Plaintiff on any basis.

12 51. Answering paragraph 66 of the FAC, states that the posting on
13 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the
14 posting that is inconsistent with the posting itself, denies any and all allegations that any
15 statements by Mr. Pierce are “false and/or misleading to consumers,” denies all other
16 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

17 52. Answering paragraph 67 of the FAC, states that the posting on
18 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the
19 posting that is inconsistent with the posting itself, denies any and all allegations that any
20 statements by Mr. Pierce are “false and/or misleading to consumers,” denies all other
21 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

22 53. Answering paragraph 68 of the FAC, denies that Bruce Kneller is
23 currently GNI’s formulator, admits that Mr. Kneller has gone by the internet screen name
24 “Kohen Gadol”, admits that he has posted on BodyBuilding.com, states that the posting
25 on BodyBuilding.com is a posting that speaks for itself, denies any characterization of the
26 posting that is inconsistent with the posting itself, denies any and all allegations that any
27 statements by Mr. Kneller are “false and/or misleading to consumers,” denies all other
28 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

54. Answering paragraph 69 of the FAC, denies that GNI representatives
have made false statements as to the DSHEA-compliance of GNI’s products, states that

1 the posting on BodyBuilding.com is a posting that speaks for itself, denies any
2 characterization of the posting that is inconsistent with the posting itself, denies any and
3 all allegations that any statements by “Zachattack43” are “false and/or misleading to
4 consumers,” denies all other allegations in the paragraph, and denies it is liable to Plaintiff
5 on any basis.

6 55. Answering paragraph 70 of the FAC, states that the posting on
7 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the
8 posting that is inconsistent with the posting itself, denies any and all allegations that any
9 statements by user98511001541 are “false and/or misleading to consumers,” denies all
10 other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

11 56. Answering paragraph 71 of the FAC, states that the posting on
12 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the
13 posting that is inconsistent with the posting itself, denies any and all allegations that any
14 statements by “Iceman” are “false and/or misleading to consumers,” denies all other
15 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

16 57. Answering paragraph 72 of the FAC, denies that GNI made any false
17 statements regarding DSHEA-compliance, denies all other allegations in the paragraph,
18 and denies it is liable to Plaintiff on any basis.

19 58. Answering paragraph 73 of the FAC, admits that Novedex XT was
20 sold at GNC and The Vitamin Shoppe, affirmatively states Defendant’s products are legal
21 dietary supplements, denies all other allegations in the paragraph, and denies it is liable to
22 Plaintiff on any basis.

23 59. Answering paragraph 74 of the FAC, denies that Plaintiff’s products
24 effectively compete with Defendant’s, admits that GNI’s products are sold and marketed
25 to competitive and amateur bodybuilders, is without knowledge or information sufficient
26 to format a belief as to whether Plaintiff’s products are sold and marketed through the
27 same channels, denies all other allegations in the paragraph, and denies it is liable to
28 Plaintiff on any basis.

60. Answering paragraph 75 of the FAC, admits that Novedex XT has
been marketed as a testosterone booster, affirmatively states Novadex XT is primarily

1 marketed as an anti-estrogen/anti-aromatase product which minimizes the production of
2 any and all estrogens in the body, is without knowledge or information sufficient to form a
3 belief as to the nature of T-BOL and its testosterone boosting properties, and therefore
4 denies same, is without knowledge or information sufficient to form a belief as to whether
5 the products were sold and marketed on the same websites and in the same stores and
6 therefore denies same, denies all other allegations in the paragraph, and denies it is liable
7 to Plaintiff on any basis.

8 61. Denies the allegations of paragraph 76 of the FAC.

9 62. Admits the allegations of paragraph 77 and 78 of the FAC.

10 63. Denies the allegations of paragraph 79 of the FAC.

11 64. Admits the allegations of paragraph 80 of the FAC.

12 65. Answering paragraph 81 of the FAC, admits that Mr. Gaspari
13 released a statement, states that the statement speaks for itself, denies any characterization
14 of the statement which is inconsistent with the statement itself, denies any and all
15 allegations that any statements by Mr. Gaspari are false, denies all other allegations in the
16 paragraph, and denies it is liable to Plaintiff on any basis.

17 66. Answering paragraph 82 of the FAC, states that the posting on
18 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the
19 posting that is inconsistent with the posting itself, denies any and all allegations that any
20 statements by "Iceman" are "false and/or misleading to consumers," denies all other
21 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

22 67. Answering paragraph 83 of the FAC, denies any and all allegations
23 that it made false statements, denies all other allegations in the paragraph, and denies it is
24 liable to Plaintiff on any basis.

25 68. Answering paragraph 84 of the FAC, admits that Halodrol Liquigels
26 and Halodrol MT were sold at GNC and The Vitamin Shoppe, affirmatively states
27 Defendant's products are legal dietary supplements, denies all other allegations in the
28 paragraph, and denies it is liable to Plaintiff on any basis.

69. Denies the allegations of paragraph 85 of the FAC.

70. Answering paragraphs 86 and 87 of the FAC, states that the formal

1 enforcement report issued by the FDA is a document that speaks for itself, denies any
2 characterization of the report which is inconsistent with the report itself, denies all other
3 allegations in the paragraphs, and denies it is liable to Plaintiff on any basis.

4 71. Answering paragraph 88 of the FAC, admits that MuscleMaster.com
5 conducted a voluntary recall of Halodrol Liguigels, states that the recall notice is a
6 document that speaks for itself, denies any characterization of the recall notice which is
7 inconsistent with the recall notice itself, denies all other allegations in the paragraph, and
8 denies it is liable to Plaintiff on any basis.

9 72. Answering paragraph 89 of the FAC, denies that Plaintiff's products
10 effectively compete with Defendant's, admits that GNI's products are sold and marketed
11 to competitive and amateur bodybuilders, is without knowledge or information sufficient
12 to form a belief as to whether Plaintiff's products are all sold and marketed to competitive
13 and amateur bodybuilders or through the same channels and therefore denies same, denies
14 all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

15 73. Answering paragraph 90 of the FAC, admits that Halodrol Liguigels
16 and Halodrol MT are testosterone boosters, affirmatively states Novadex XT is primarily
17 marketed as an anti-estrogen/anti-aromatase product which minimizes the production of
18 any and all estrogens in the body, is without knowledge or information sufficient to form a
19 belief as to whether T-BOL is a testosterone booster, DSHEA-compliant, or sold and
20 marketed on the same websites and in the same stores and therefore denies same.

21 74. Denies the allegations of paragraph 91 of the FAC.

22 75. Answering paragraph 92 of the FAC, admits that GNI advertised and
23 labeled Halodrol Liguigels and Halodrol MT as including 95% 3,4
24 divanillyltetrahydrofuran, denies all other allegations in the paragraph, and denies it is
25 liable to Plaintiff on any basis.

26 76. Answering paragraphs 93, 94, 95, 96, 97, and 98 of the FAC, is
27 without knowledge or information sufficient to form a belief as to the allegations in the
28 paragraph, and therefore, denies same.

77. Answering paragraph 99 of the FAC, admits that ThermoLife
published information on the Internet, denies that the publication of information was for

1 the purpose of promoting awareness, affirmatively asserts that the purpose of
2 ThermoLife's publication of information was blatant self-promotion, denies all other
3 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

4 78. Answering paragraph 100 of the FAC, admits that GNI was aware
5 that ThermoLife published information on the Internet concerning ChromaDex's testing,
6 states that the information produced by ChromaDex speaks for itself, denies any
7 characterization of the information which is inconsistent with the information itself,
8 reserves all rights to challenge the authenticity, accuracy, and relevance of the information
9 presented by Plaintiff in relation to the ChromaDex information, denies all other
10 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

11 79. Answering paragraph 101 of the FAC, admits that GNI sold and
12 advertised its Halodrol Liquigels and Halodrol MT products, state that those
13 advertisements speak for themselves, denies any characterization of those advertisements
14 which are inconsistent with the advertisements themselves, denies all other allegations in
the paragraph, and denies it is liable to Plaintiff on any basis.

15 80. Denies the allegations of paragraph 102 of the FAC.

16 81. Admits the allegations of paragraph 103 of the FAC.

17 82. Answering paragraph 104 of the FAC, states that the label for
18 SuperPump 250 speaks for itself, denies any characterization of the label which is
19 inconsistent with the label itself, denies all other allegations in the paragraph, and denies it
20 is liable to Plaintiff on any basis.

21 83. Answering paragraph 105 of the FAC, states that advertising for
22 SuperPump 250 speaks for itself, denies any characterization of the advertising which is
23 inconsistent with the advertising itself, denies all other allegations in the paragraph, and
24 denies it is liable to Plaintiff on any basis.

25 84. Denies the allegations of paragraph 106 of the FAC.

26 85. Answering paragraphs 107, 108, and 109 of the FAC, states it is
27 without knowledge or information sufficient to form a belief as to the allegations in the
28 paragraph, and therefore, denies same.

86. Answering paragraph 110 of the FAC, states it is without knowledge

1 or information sufficient to form a belief as to the allegations concerning what is or is not
2 surprising to Plaintiff and therefore denies same, denies that ThermoLife is a market
3 leader in anything, let alone in the sales of Turkesterone, is without knowledge or
4 information sufficient to form a belief as to whether ThermoLife has an exclusive
5 distributor agreement or whether only one company is known to produce a useable
6 amount of Turkesterone for use in dietary supplements and therefore denies same, denies
7 all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

8 87. Answering paragraph 111 of the FAC, states it is without knowledge
9 or information sufficient to form a belief as to the allegations in this paragraph, and
10 therefore, denies same.

11 88. Answering paragraph 112 of the FAC, admits that GNI posted on the
12 BodyBuilding.com board, states that the posting is a document that speaks for itself,
13 denies any characterization of the posting inconsistent with the posting itself, denies all
14 other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

15 89. Denies the allegations of paragraph 113 of the FAC.

16 90. Admits the allegations of paragraph 114 of the FAC.

17 91. Answering paragraph 115 of the FAC, states that it has not broken a
18 grain of salt into 100 pieces, so is without knowledge or information sufficient to form a
19 belief as to the allegations in this paragraph and therefore denies same, denies all other
20 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

21 92. Answering paragraph 116 of the FAC, disputes the characterization
22 of GNI's statement as a "concession" and denies any statement made by GNI relevant to
23 this matter conflicts with GNI's advertising. Furthermore, Defendant states that the
24 marketing video is a video that speaks for itself, denies any characterization of the video
25 that is inconsistent with the video itself, is without information or belief whether the video
26 was uploaded on or around October 9, 2010, denies all other allegations in the paragraph,
27 and denies it is liable to Plaintiff on any basis.

28 93. Denies the allegations of paragraphs 117, 118, 119, and 120 of the
FAC.

94. Denies the allegations of paragraph 121 of the FAC.

1 95. Admits the allegations of paragraphs 122 and 123 of the FAC.

2 96. Answering paragraph 124 of the FAC, notes that claims concerning
3 ThermoLife's supposed anticipated sales at the Mr. Olympia have been dismissed by the
4 Court on May 16, 2012 (Court Document No. 46), and therefore, Defendant need not
5 respond to this paragraph.

6 97. Admit the allegations of paragraph 125 of the FAC.

7 98. Answering paragraph 126 of the FAC, states that it is without
8 knowledge or information sufficient to form a belief as to the extent of ThermoLife's
9 efforts to secure attendance at the Mr. Olympia event, and therefore denies same.

10 99. Answering paragraph 127 of the FAC, admits that GNI contacted
11 American Media, Inc., denies this was motivated by ill-will and spite, affirmatively states
12 that the founder of ThermoLife, Ron Kramer, regularly threatens people with serious
13 bodily injury and death, including employees and agents of GNI and is a convicted felon
14 with an extensive criminal history including investigations, charges, and convictions for
15 violent offenses, drug offenses, and alcohol offenses. Specifically, upon information and
16 belief:

- 17 ▪ Mr. Kramer was charged with fifteen felony counts of
18 possession/trafficking in anabolic steroids or on around September 4,
19 1997. He pled to two felony violations of California Health and
20 Safety Code Section 11379 (import/transport/sale of a controlled
21 substance).
- 22 ▪ Mr. Kramer was charged with possession of anabolic steroids, while
23 on probation for the above-listed felony conviction, on or around
24 May 11, 2001.
- 25 ▪ Mr. Kramer was charged with sexual abuse and witness intimidation
26 in Santa Cruz County, California.
- 27 ▪ Mr. Kramer was charged with aggravated assault in Scottsdale,
28 Arizona, on or about May 30, 2004. He was accused of holding a
knife to the victim's throat. He plead guilty to a count of
endangerment on or around May 22, 2006.

- 1 ▪ Mr. Kramer was charged with a DUI in Scottsdale, Arizona on or
2 around August 7, 200. He plead guilty to DUI on December 2, 2008.
- 3 ▪ Mr. Kramer was charged with possession of marijuana and drug
4 paraphernalia in Tempe, Arizona on or around October 22, 2008. He
5 plead guilty to possession of marijuana.
- 6 ▪ Mr. Kramer was charged with aggravated DUI for driving under the
7 influence in combination with failing to have an Interlock Ignition
8 Device installed in Scottsdale, Arizona on or around October 28,
9 2010. He was convicted of Aggravated DUI on or around March 1,
10 2012.
- 11 ▪ Mr. Kramer was investigated for allegedly making death threats on or
12 around March 27, 2005. Mr. Kramer allegedly showed up as an
13 uninvited guest to a private party at 3:25AM, asked for alcohol and
14 drugs, and then harassed a female inside the establishment. Mr.
15 Kramer reportedly threatened to kill a security guard when the
16 security guard asked Mr. Kramer to leave.
- 17 ▪ Mr. Kramer was investigated for using fictitious license plates on or
18 around April 11, 2005. Mr. Kramer was investigated by the Chandler
19 Police Department for attaching a fictitious license plate onto a
20 Cadillac Escalade owned by Mr. Kramer. The investigation revealed
21 that Mr. Kramer removed a California license plate from a previously
22 owned vehicle that Mr. Kramer reported stolen, and placed this
23 California license plate on a Cadillac Escalade owned by Mr.
24 Kramer.
- 25 ▪ Mr. Kramer was investigated for public disturbance/disorderly
26 conduct on or around February 17, 2006. The Chandler Police
27 Department investigated a public disturbance call at a Sprint PCS
28 retail store. The investigation revealed that Mr. Kramer allegedly
 came to the store after closing and repeatedly banged on the store
 windows, after which the store manager contacted the police and

1 requested that he and a female employee be escorted out of the store.

- 2 ■ On or around April 9, 2007, Mr. Kramer allegedly went to the home
3 of an electrical contractor with whom he had a dispute while
4 accompanied by another person and threatened the contractor.
5 Fearing for his safety, the contractor is alleged to have armed himself
6 with a firearm at which point Mr. Kramer and his companion left the
7 residence.
- 8 ■ Mr. Kramer was investigated in relation to a domestic dispute on or
9 around April 16, 2007. The investigation revealed that Mr. Kramer,
10 allegedly continued to pursue and harass an ex-girlfriend after they
11 broke up.
- 12 ■ Mr. Kramer was investigated in relation to a fight at local bar in
13 Phoenix, Arizona on or around March 18, 2009. The investigation
14 revealed that Mr. Kramer was allegedly intoxicated and involved in a
15 fight inside the bar.
- 16 ■ Mr. Kramer was investigated in relation to a fight at a local bar in
17 Phoenix, Arizona on or around March 25, 2009. The investigation
18 revealed that Mr. Kramer was allegedly harassing patrons at a local
19 Phoenix bar and provoked a fight with a male patron. The
20 investigation also showed that Mr. Kramer frequented the bar on a
21 regular basis, and was known to aggressively harass bar patrons.
- 22 ■ Mr. Kramer was investigated for allegedly assaulting nightclub
23 employees on or around August 22, 2010. According to the police
24 report, Mr. Kramer claimed that he had paid \$15,000 for a
25 Thermolife endorsement to be displayed on a VIP booth at the Phase
26 54 nightclub, which constituted an advertisement, (i.e., not ownership
27 of the booth). Mr. Kramer came into the nightclub and became angry
28 when he saw a bar patron sitting in the VIP booth which displayed
the Thermolife advertisement. Mr. Kramer allegedly assaulted two
bar employees when they attempted to explain the booth seating and

usage arrangement to Mr. Kramer.

- The Drug Enforcement Administration served a search warrant on Mr. Kramer's Phoenix residence on or around August 26, 2009, seeking evidence pertaining to trafficking of controlled substances (steroids).

Mr. Kramer's propensity for violence and threats of violence is a central means by which Thermolife conducts business and deals with competitors. In light of Thermolife's inability to compete with GNI and other leading manufacturers in the sports supplement industry, Mr. Kramer routinely resorts to violence and/or threats of violence against officers and employees of competitors and alludes to his history of violence in an effort to intimidate and harass Thermolife's competitors. In fact, in the 12 months leading up to the 2009 Mr. Olympia, Mr. Kramer directly threatened Mr. Gaspari, GNI employees, and their families with serious physical injury and death. See Emails and Postings By Mr. Kramer attached as **Exhibit 1**. It was Mr. Kramer's threats of violence and the concern for the safety and well being of GNI personnel, their family members and invitees that prompted the call to American Media of which Thermolife now complains.¹

100. Denies the allegations of paragraph 128 of the FAC.

101. Answering paragraph 129 of the FAC, denies it made "threats" to pull its advertising, admits it put American Media, Inc. on notice Defendant would not advertise through Media at any American Media event in which ThermoLife participated, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

¹ Mr. Kramer, who has not had any personal success in the competitive professional bodybuilding world, has also resorted to ad hominem attacks on Mr. Gaspari—an International Bodybuilding Federation Hall of Fame member—and corruptions of his surname in an apparent attempt to embarrass Mr. Gaspari before members of the bodybuilding and sports supplement community. In fact, Mr. Kramer attempted to personally serve Mr. Gaspari with this lawsuit by bringing a camera crew to Mr. Gaspari's induction into the Muscle Beach Hall of Fame, and proceeded to publicly berate him, call him names, and generally attempt to provoke Mr. Gaspari. See <http://www.youtube.com/watch?v=3UMeu3eZhjE>. Mr. Kramer's attempt to provoke Mr. Gaspari was unsuccessful and his effort to embarrass Mr. Gaspari resulted in Mr. Kramer being ridiculed on the body building forums for his sophomoric antics.

1 102. Answering paragraph 130 of the FAC, denies it made threats or acted
2 improperly, states that it is without knowledge or information sufficient to form a belief as
3 to what American Media informed ThermoLife and therefore denies same.

4 103. Answering paragraph 131 of the FAC, states it is without knowledge
5 or information sufficient to form a belief as to the arrangements it made to attend the
6 Olympia Weekend Expo and therefore denies same, denies that its actions were improper,
7 denies all other allegations in the paragraph, and denies it is liable to Plaintiffs on any
8 basis.

9 104. Answering paragraph 132 of the FAC, notes that claims concerning
10 ThermoLife's supposed loss of business opportunities at the Mr. Olympia have been
11 dismissed by the Court on May 16, 2012 (Court Document No. 46), and therefore,
12 Defendant need not respond to this paragraph.

13 105. Denies the allegations of paragraph 133 of the FAC, and
14 affirmatively asserts that its actions in conjunction with the Mr. Olympia were in response
15 to credible threats against Defendant, its employees, and agents by a convicted felon with
16 a history of violent and unpredictable behavior.

17 **FIRST CLAIM FOR RELIEF**

18 (False Advertising Under 15 U.S.C. § 1125(a)(1)(B))

19 106. Answering paragraph 134 of the FAC, restates and incorporates here
20 by reference paragraphs 1 through 105 of its Answer, above.

21 107. Denies the allegations of paragraph 135 of the FAC.

22 108. Admits the allegations of paragraph 136 of the FAC.

23 109. Answering paragraph 137 of the FAC, states that Mr. Gaspari
24 responded to the ban, denies his statements were false, states that Mr. Gaspari's
25 statements speak for themselves, denies any characterization of the statements which is
26 inconsistent with the statements themselves, denies all other allegations in the paragraph,
27 and denies it is liable to Plaintiff on any basis.

28 110. Admits the allegations of paragraph 138 of the FAC.

 111. Answering paragraph 139 of the FAC, denies it made false
assertions, states that the internet commercial speaks for itself, denies any characterization

1 of the internet commercial that is inconsistent with the internet commercial itself, denies
2 all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

3 112. Answering paragraph 140 of the FAC, denies it uses banned and/or
4 illegal substances in its products, states that the Washington Post article and tests
5 performed speak for themselves, denies any characterization of the article and tests which
6 are inconsistent with the article or tests themselves, reserves the right to challenge
7 conclusions reached by the article and/or tests, as may be relevant in this matter, denies all
8 other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

9 113. Denies the allegations of paragraphs 141, 142, 143, 144, 145, 146,
10 147, 148, 149, 150, 151, 152, and 153 of the FAC.

11 **SECOND CLAIM FOR RELIEF**

12 (False Advertising Under 15 U.S.C. § 1125(a)(1)(B))

13 114. Answering paragraph 154 of the FAC, restates and incorporates here
14 by reference paragraphs 1 through 113 of its Answer, above.

15 115. Denies the allegations of paragraph 155 of the FAC.

16 116. Answering paragraph 156 of the FAC, states that its statements speak
17 for themselves, denies that the statements were false and/or misleading to consumers,
18 denies any characterization of its statements which are inconsistent with its statements
19 themselves, denies all other allegations in the paragraph, and denies it is liable to Plaintiff
20 on any basis.

21 117. Answering paragraph 157 of the FAC, states that Mr. Pierce's
22 statement speaks for itself, denies that the statement was false and/or misleading to
23 consumers, denies any characterization of the statement which is inconsistent with the
24 statement itself, denies all other allegations in the paragraph, and denies it is liable to
25 Plaintiff on any basis.

26 118. Answering paragraph 158 of the FAC, states that Mr. Pierce's
27 statement speaks for itself, denies that the statement was false and/or misleading to
28 consumers, denies any characterization of the statement which is inconsistent with the
29 statement itself, denies all other allegations in the paragraph, and denies it is liable to
30 Plaintiff on any basis.

1 119. Answering paragraph 159 of the FAC, states that Mr. Pierce's
2 statement speaks for itself, denies that the statement was false and/or misleading to
3 consumers, denies any characterization of the statement which is inconsistent with the
4 statement itself, denies all other allegations in the paragraph, and denies it is liable to
5 Plaintiff on any basis.

6 120. Answering paragraph 160 of the FAC, states that Mr. Pierce's
7 statement speaks for itself, denies that the statement was false and/or misleading to
8 consumers, denies any characterization of the statement which is inconsistent with the
9 statement itself, denies all other allegations in the paragraph, and denies it is liable to
10 Plaintiff on any basis.

11 121. Answering paragraph 161 of the FAC, states that "Zachattack43"'s
12 statement speaks for itself, denies that the statement was false and/or misleading to
13 consumers, denies any characterization of the statement which is inconsistent with the
14 statement itself, denies all other allegations in the paragraph, and denies it is liable to
15 Plaintiff on any basis.

16 122. Answering paragraph 162 of the FAC, states that user98511001541's
17 posting speaks for itself, denies that the statement was false and/or misleading to
18 consumers, denies any characterization of the statement which is inconsistent with the
19 statement itself, denies all other allegations in the paragraph, and denies it is liable to
20 Plaintiff on any basis.

21 123. Answering paragraph 163 of the FAC, states that "Iceman's" posting
22 speaks for itself, denies that the statement was false and/or misleading to consumers,
23 denies any characterization of the statement which is inconsistent with the statement itself,
24 denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any
25 basis.

26 124. Answering paragraph 164 of the FAC, denies any and all allegations
27 that it made false statements, denies all other allegations in the paragraph, and denies it is
28 liable to Plaintiff on any basis

 125. Answering paragraph 165 of the FAC, admits that Novedex XT was
sold at GNC and The Vitamin Shoppe, denies all other allegations in the paragraph, and

1 denies it is liable to Plaintiff on any basis.

2 126. Answering paragraph 166 of the FAC, states that any statements
3 made by GNI concerning the DSHEA-compliance status of Novadex XT speaks for
4 themselves, denies any characterization of statements which are inconsistent with the
5 statements themselves, is without knowledge or information sufficient to form a belief as
6 to whether a substantial portion of dietary supplement consumer make purchase decisions
7 based upon DSHEA compliance and therefore denies same, denies all other allegations in
8 the paragraph, and denies it is liable to Plaintiff on any basis.

9 127. Answering paragraph 167 of the FAC, states that any statements
10 made by GNI concerning the DSHEA-compliance status of Novadex XT speaks for
11 themselves, denies any characterization of statements which are inconsistent with the
12 statements themselves, denies all other allegations in the paragraph, and denies it is liable
13 to Plaintiff on any basis.

14 128. Answering paragraph 168 of the FAC, states that the FDA's office
15 action is a document that speaks for itself, denies any characterization of the office action
16 which is inconsistent with the office action itself, denies all other allegations in the
17 paragraph, and denies it is liable to Plaintiff on any basis.

18 129. Denies the allegations of paragraphs 169, 170, 171, 172, 173, 174,
19 175, 176, 177, 178 and 179 of the FAC.

20 **THIRD CLAIM FOR RELIEF**

21 (False Advertising under 15 U.S.C. § 1125(a)(1)(B))

22 130. Answering paragraph 180 of the FAC, restates and incorporates here
23 by reference paragraphs 1 through 129 of its Answer, above.

24 131. Answering paragraph 181 of the FAC, states that GNI's advertising
25 speaks for itself, denies any characterization of GNI's advertising which is inconsistent
26 with the advertising itself, denies any allegations that GNI made false statements in
27 conjunction with its advertising, denies all other allegations in the paragraph, and denies it
28 is liable to Plaintiff on any basis.

 132. Answering paragraph 182 of the FAC, states that GNI's advertising
speaks for itself, denies any characterization of GNI's advertising which is inconsistent

1 with the advertising itself, denies any allegations that GNI made false statements in
2 conjunction with its advertising, denies all other allegations in the paragraph, and denies it
3 is liable to Plaintiff on any basis.

4 133. Answering paragraph 183 of the FAC, states that GNI's advertising
5 speaks for itself, denies any characterization of GNI's advertising which is inconsistent
6 with the advertising itself, denies any allegations that GNI made false statements in
7 conjunction with its advertising, denies all other allegations in the paragraph, and denies it
8 is liable to Plaintiff on any basis.

9 134. Answering paragraph 184 of the FAC, states that the label on
10 Novedex XT speaks for itself, denies any characterization of the label which is
11 inconsistent with the label itself, denies any allegations that GNI made false statements in
12 conjunction with its labeling, denies all other allegations in the paragraph, and denies it is
13 liable to Plaintiff on any basis.

14 135. Answering paragraph 185 of the FAC, states that GNI's advertising
15 speaks for itself, denies any characterization of GNI's advertising which is inconsistent
16 with the advertising itself, denies any allegations that GNI made false statements in
17 conjunction with its advertising, denies all other allegations in the paragraph, and denies it
18 is liable to Plaintiff on any basis.

19 136. Answering paragraph 186 of the FAC, states that GNI's advertising
20 speaks for itself, denies any characterization of GNI's advertising which is inconsistent
21 with the advertising itself, denies any allegations that GNI made false statements in
22 conjunction with its advertising, denies all other allegations in the paragraph, and denies it
23 is liable to Plaintiff on any basis.

24 137. Answering paragraph 187 of the FAC, states that GNI's advertising
25 speaks for itself, denies any characterization of GNI's advertising which is inconsistent
26 with the advertising itself, denies any allegations that GNI made false statements in
27 conjunction with its advertising, denies all other allegations in the paragraph, and denies it
28 is liable to Plaintiff on any basis.

138. Answering paragraph 188 of the FAC, denies that Bruce Kneller is
currently GNI's formulator, states that the posting on BodyBuilding.com is a posting that

1 speaks for itself, denies any characterization of the posting that is inconsistent with the
2 posting itself, denies any and all allegations that any statements by Mr. Kneller are “false
3 and/or misleading to consumers,” denies all other allegations in the paragraph, and denies
4 it is liable to Plaintiff on any basis.

5 139. Answering paragraph 189 of the FAC, states that GNI’s statements
6 concerning Novedex XT speak for themselves, denies any characterization of the
7 statements which are inconsistent with the statements themselves, denies any allegations
8 that GNI made false statements, denies all other allegations in the paragraph, and denies it
9 is liable to Plaintiff on any basis.

10 140. Denies the allegations of paragraphs 190, 191, 192, 193, 194, 195,
11 196, 197, 198, and 199 of the FAC.

12 **FOURTH CLAIM FOR RELIEF**

13 (False Advertising under 15 U.S.C. § 1125(a)(1)(B))

14 141. Answering paragraph 200 of the FAC, restates and incorporates here
15 by reference paragraphs 1 through 140 of its Answer, above.

16 142. Answering paragraph 201 of the FAC, states that GNI’s advertising
17 speaks for itself, denies any characterization of GNI’s advertising which is inconsistent
18 with the advertising itself, denies any allegations that GNI made false statements in
19 conjunction with its advertising, denies all other allegations in the paragraph, and denies it
20 is liable to Plaintiff on any basis.

21 143. Answering paragraph 202 of the FAC, states that GNI’s advertising
22 speaks for itself, denies any characterization of GNI’s advertising which is inconsistent
23 with the advertising itself, denies any allegations that GNI made false statements in
24 conjunction with its advertising, denies any allegation that calls into question the safety of
25 GNI’s products, denies all other allegations in the paragraph, and denies it is liable to
26 Plaintiff on any basis.

27 144. Answering paragraph 203 of the FAC, states that the label on
28 Novedex XT speaks for itself, denies any characterization of the label which is
inconsistent with the label itself, denies any allegations that GNI made false statements in
conjunction with its labeling, denies all other allegations in the paragraph, and denies it is

1 liable to Plaintiff on any basis.

2 145. Answering paragraph 204 of the FAC, states that GNI's advertising
3 speaks for itself, denies any characterization of GNI's advertising which is inconsistent
4 with the advertising itself, denies any allegations that GNI made false statements in
5 conjunction with its advertising, denies any allegation that calls into question the safety of
6 GNI's products, denies all other allegations in the paragraph, and denies it is liable to
7 Plaintiff on any basis.

8 146. Answering paragraph 205 of the FAC, states that GNI's advertising
9 and the FDA's conclusions are documents that speak for themselves, denies any
10 characterization of those documents which are inconsistent with the documents
11 themselves, denies any allegations that GNI made false statements in conjunction with its
12 advertising, denies all other allegations in the paragraph, and denies it is liable to Plaintiff
13 on any basis.

14 147. Answering paragraph 206 of the FAC, states that the posting speaks
15 for itself, denies any characterization of the posting that is inconsistent with the posting
16 itself, denies any and all allegations that any statements by user98511001541 are "false
17 and/or misleading to consumers," denies any allegation that calls into question the safety
18 of GNI's products, denies all other allegations in the paragraph, and denies it is liable to
19 Plaintiff on any basis.

20 148. Answering paragraph 207 of the FAC, states that the posting speaks
21 for itself, denies any characterization of the posting that is inconsistent with the posting
22 itself, denies any and all allegations that any statements by "Iceman" are "false and/or
23 misleading to consumers," denies any allegation that calls into question the safety of
24 GNI's products, denies all other allegations in the paragraph, and denies it is liable to
25 Plaintiff on any basis.

26 149. Answering paragraph 208 of the FAC, states that Mr. Gaspari's
27 statement speaks for itself, denies any characterization of his statement which is
28 inconsistent with the statement itself, denies any allegation that calls into question the
safety of GNI's products, denies all other allegations in the paragraph, and denies it is
liable to Plaintiff on any basis.

150. Denies the allegations of paragraphs 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, and 219 of the FAC.

FIFTH CLAIM FOR RELIEF

(False Advertising under 15 U.S.C. § 1125(a)(1)(B))

151. Answering paragraph 220 of the FAC, restates and incorporates here by reference paragraphs 1 through 150 of its Answer, above.

152. Answering paragraph 221 of the FAC, states that its advertisements speak for themselves, denies any characterization of its advertisements which is inconsistent with the advertisements themselves, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

153. Answering paragraph 222 of the FAC, states that the posting speaks for itself, denies any characterization of the posting that is inconsistent with the posting itself, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

154. Answering paragraph 223 of the FAC, denies it made false statements about its products, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

155. Answering paragraph 224 of the FAC, admits Halodrol Liquigels and Halodrol MT were sold at GNC and The Vitamin Shoppe, affirmatively states Defendant's products are legal dietary supplements, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

156. Answering paragraph 225 of the FAC, states that the statements referenced in the paragraph speak for themselves, denies any characterization of the statements which are inconsistent with the statements themselves, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

157. Answering paragraph 226 of the FAC, admits that the FDA issued a formal enforcement report, states that the enforcement report is a document that speaks for itself, denies any characterization of the enforcement report which is inconsistent with the report itself, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

1 158. Answering paragraph 227 of the FAC, states that the enforcement
2 report is a document that speaks for itself, denies any characterization of the enforcement
3 report which is inconsistent with the report itself, denies all other allegations in the
4 paragraph, and denies it is liable to Plaintiff on any basis.

5 159. Answering paragraph 228 of the FAC, admits that, upon information
6 and belief, MuscleMaster.com conducted a voluntary recall of Halodrol Liquigels, states
7 that the recall notice is a document that speaks for itself, denies any characterization of the
8 recall notice which is inconsistent with the recall notice itself, denies all other allegations
9 in the paragraph, and denies it is liable to Plaintiff on any basis.

10 160. Denies the allegations of paragraphs 229, 230, 231, 232, 233, 234,
11 235, 236, 237, 238, and 239 of the FAC.

12 **SIXTH CLAIM FOR RELIEF**

13 (False Advertising under 15 U.S.C. § 1125(a)(1)(B))

14 161. Answering paragraph 240 of the FAC, restates and incorporates here
15 by reference paragraphs 1 through 160 of its Answer, above.

16 162. Answering paragraph 241 of the FAC, admits that GNI has
17 advertised its Halodrol Liquigels and Halodrol MT as safe products, affirmatively states
18 that its products are safe, denies all other allegations in the paragraph, and denies it is
19 liable to Plaintiff on any basis.

20 163. Answering paragraph 242 of the FAC, state that the statement by Mr.
21 Gaspari is a statement that speaks for itself, denies any characterization of the statement
22 which is consistent with the statement itself, denies any allegation that calls into question
23 the safety of GNI's products, denies all other allegations in the paragraph, and denies it is
24 liable to Plaintiff on any basis.

25 164. Denies the allegations of paragraphs 243, 244, 245, 246, 247, 248,
26 249, 250, 251, 252, and 253, and specifically denies any allegation that calls into question
27 the safety of GNI's products.

28 **SEVENTH CLAIM FOR RELIEF**

(False Advertising under 15 U.S.C. § 1125(a)(1)(B))

165. Answering paragraph 254 of the FAC, restates and incorporates here

1 by reference paragraphs 1 through 164 of its Answer, above.

2 166. Answering paragraph 255 of the FAC, states that GNI's advertising
3 speaks for itself, denies any characterization of its advertising which is inconsistent with
4 the advertising itself, denies all other allegations in the paragraph, and denies it is liable
5 to Plaintiff on any basis.

6 167. Answering paragraphs 256, 257, 258, 259, 260, and 261 of the FAC,
7 states that it is without knowledge or information sufficient to form a belief as to the
8 allegations set forth in those paragraphs, and therefore, denies same.

9 168. Answering paragraph 262 of the FAC, admits that ThermoLife
10 published information on the Internet, denies that the publication of information was for
11 the purpose of promoting awareness, affirmatively asserts that the purpose of
12 ThermoLife's publication of information was blatant self-promotion, denies all other
13 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

14 169. Answering paragraph 263 of the FAC, admits that GNI was aware
15 that ThermoLife published information on the internet of ChromaDex's testing, states that
16 the information produced by ChromaDex speaks for itself, denies any characterization of
17 the information which is inconsistent with the information itself, reserves all rights to
18 challenge the authenticity, accuracy, and relevance of the information presented by
19 Plaintiff in relation to the ChromaDex information, denies all other allegations in the
20 paragraph, and denies it is liable to Plaintiff on any basis.

21 170. Denies the allegations of paragraphs 264, 265, 266, 267, 268, 269,
22 270, 271, and 272 of the FAC.

23 **EIGHTH (SIC) CLAIM FOR RELIEF**

24 (False Advertising under 15 U.S.C. § 1125(a)(1)(B))

25 171. Answering paragraph 273 of the FAC, restates and incorporates here
26 by reference paragraphs 1 through 170 of its Answer, above.

27 172. Answering paragraph 274 of the FAC, states that GNI's advertising
28 speaks for itself, denies any characterization of the advertising which is inconsistent with
the advertising itself, denies all other allegations in the paragraph, and denies it is liable to
Plaintiffs on any basis.

1 173. Answering paragraph 275 of the FAC, states that GNI's advertising
2 speaks for itself, denies any characterization of the advertising which is inconsistent with
3 the advertising itself, denies all other allegations in the paragraph, and denies it is liable to
4 Plaintiffs on any basis.

5 174. Denies the allegations of paragraph 276 of the FAC.

6 175. Answering paragraphs 277 and 278 of the FAC, states it is without
7 knowledge or information sufficient to form a belief as to the allegations in the paragraph,
8 and therefore, denies same.

9 176. Answering paragraph 279 of the FAC, states it is without knowledge
10 or information sufficient to form a belief as to the allegations concerning what is or is not
11 surprising to Plaintiff and therefore denies same, denies that ThermoLife is a market
12 leader in anything, let alone in the sales of Turkesterone, is without knowledge or
13 information sufficient to form a belief as to whether ThermoLife has an exclusive
14 distributor agreement or whether only one company is known to produce a useable
15 amount of Turkesterone for use in dietary supplements and therefore denies same, denies
16 all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

17 177. Answering paragraph 280 of the FAC, states it is without knowledge
18 or information sufficient to form a belief as to the allegations in this paragraph, and
19 therefore, denies same.

20 178. Answering paragraph 281 of the FAC, states GNI's advertisements
21 speak for themselves, denies any characterization of its advertisements which are
22 inconsistent with the advertisements themselves, denies all other allegations in the
23 paragraph, and denies it is liable to Plaintiff on any basis.

24 179. Denies the allegations of paragraph 282, 283, 284, 285, 286, 287,
25 288, and 289 of the FAC.

26 **NINTH CLAIM FOR RELIEF**

27 (False Advertising under 15 U.S.C. § 1125(a)(1)(B))

28 180. Answering paragraph 290 of the FAC, restates and incorporates here
by reference paragraphs 1 through 179 of its Answer, above.

 181. Denies the allegations of paragraph 291 of the FAC.

1 182. Answering paragraph 292 of the FAC, states that it is without
2 knowledge or information sufficient to form a belief as to what ThermoLife believes and
3 therefore denies same, denies the allegation that SuperPump 250 does not contain
4 Turkesterone, denies the allegation that there “is simply not a testable amount,”
5 affirmatively states that ThermoLife’s testing did not detect it, denies all other allegations
6 in the paragraph, and denies it is liable to Plaintiff on any basis.

7 183. Denies the allegations of paragraph 293 of the FAC.

8 184. Answering paragraph 294 of the FAC, states that the marketing video
9 is a video that speaks for itself, denies any characterization of the video which conflicts
10 with the video itself, admits the video was uploaded to YouTube.com on or around
11 October 9, 2010, denies all other allegations in the paragraph, and denies it is liable to
12 Plaintiff on any basis.

13 185. Denies the allegations of paragraphs 295, 296, 297, 298, 299, 300,
14 301, 302, 303, 304, and 305 of the FAC.

15 **TENTH CLAIM FOR RELIEF**

16 (Common Law Unfair Competition)

17 186. Answering paragraph 306 of the FAC, restates and incorporates here
18 by reference paragraphs 1 through 185 of its Answer, above.

19 187. Denies the allegations of paragraph 307, 308, 309, 310, 311, and 312.
20 To the extent that these paragraphs attempt to state a claim concerning ThermoLife’s
21 supposed lost business opportunities at the Mr. Olympia, those claims have been
22 dismissed by the Court on May 16, 2012 (Court Document No. 46), and therefore,
23 Defendant need not respond.

24 **ELEVENTH CLAIM FOR RELIEF**

25 (Tortious Interference With Business and Business Expectancy)

26 188. Answering paragraph 313 of the FAC, restates and incorporates here
27 by reference paragraphs 1 through 187 of its Answer, above.

28 189. Admits the allegations of paragraphs 314 and 315 of the FAC.

 190. Answering paragraph 316 of the FAC, notes that claims concerning
ThermoLife’s supposed anticipated sales at the Mr. Olympia have been dismissed by the

1 Court on May 16, 2012 (Court Document No. 46), and therefore, Defendant need not
2 respond to this paragraph.

3 191. Admit the allegations of paragraph 317 of the FAC.

4 192. Answering paragraph 318 of the FAC, states that it is without
5 knowledge or information sufficient to form a belief as to the extent of ThermoLife's
6 efforts to secure attendance at the Mr. Olympia event and therefore denies same.

7 193. Answering paragraph 319 of the FAC, admits that GNI contacted
8 American Media, Inc., denies this was motivated by ill-will and spite, affirmatively states
9 that the founder of ThermoLife, Ron Kramer, is a convicted felon with an extensive
10 criminal history including convictions for violent offenses and drug offenses. See
11 Criminal Background for Ron Kramer, **Exhibit 1**.

12 194. Denies the allegations of paragraph 320 of the FAC.

13 195. Answering the allegations of paragraph 321 of the FAC, denies
14 Defendant "threatened" American Media, Inc., admits the remainder of the allegations in
15 paragraph.

16 196. Answering paragraph 322 of the FAC, denies it made threats or acted
17 improperly, states that it is without knowledge or information sufficient to form a belief as
18 to what American Media informed ThermoLife, and therefore denies same.

19 197. Answering paragraph 323 of the FAC, states it is without knowledge
20 or information sufficient to form a belief as to the arrangements ThermoLife made to
21 attend the Olympia Weekend Expo, denies that its actions were improper, denies all other
22 allegations in the paragraph and therefore denies same, and denies it is liable to Plaintiff
23 on any basis.

24 198. Answering paragraphs 324, 325, 326, 327, and 328 of the FAC, notes
25 that claims concerning ThermoLife's supposed loss of business opportunities at the Mr.
26 Olympia have been dismissed by the Court on May 16, 2012 (Court Document No. 46),
27 and therefore, Defendant need not respond to this paragraph, and therefore, denies same.

28 **AFFIRMATIVE DEFENSES**

199. Defendant restates and incorporates here by reference paragraphs 1
through 198 of its Answer, above.

1 200. Alleges that the doctrine of estoppel bars the FAC in whole or in part.

2 201. Alleges that the doctrine of laches bars the FAC in whole or in part.

3 202. Alleges that expiration of the statute of limitations bars the FAC in
4 whole or in part.

5 203. Alleges that dismissal of claims by the Court (i.e., law of the case)
6 bars the FAC in part.

7 204. Alleges that the doctrine of unclean hands bars the FAC in whole or
8 in part.

9 205. Alleges that the FAC fails in whole or in part to state a claim upon
10 which relief can be granted.

11 206. Alleges that Plaintiff has failed to make reasonable and diligent
12 efforts to mitigate its claimed damages.

13 207. Defendant reserves the right to amend its Answer to include such
14 affirmative defenses as may arise during the course of discovery in this matter.

COUNTERCLAIM

15 Counterclaimant Gaspari Nutrition, Inc. (“GNI” or “Counterclaimant”), for
16 its Counterclaims against Defendants ThermoLife International, LLC (“ThermoLife” or
17 “Counterdefendant”), states and alleges as follows:

THE PARTIES

18
19 1. Counterclaimant GNI, Inc. is a corporation organized and existing
20 under the laws of the state of New Jersey.

21 2. Upon information and belief, Counterdefendant ThermoLife
22 International, LLC is a limited liability company organized and existing under the laws of
23 the State of Arizona.

JURISDICTION AND VENUE

24 3. This Counterclaim arises under the Trademark Act of 1946, 15
25 U.S.C. §§ 1051 et seq., as amended (the “Lanham Act”), and the laws of the State of
26 Arizona. Thermolife has engaged in unfair competition and has made false and/or
27 misleading representations in advertising in violation of the federal Lanham Act and the
28 Arizona common law.

1 Supplement Awards. In 2011, GNI was nominated for fourteen Supplement Awards,
2 namely:

- 3 • Supplement of the Year: SuperPump MAX; MyoFusion (2
- 4 nominations)
- 5 • New Supplement: SuperPump MAX
- 6 • Brand Nominees: Gaspari Nutrition
- 7 • Muscle Building Supplement: SuperPump MAX
- 8 • Pre-Workout: SuperPump250
- 9 • Intra-Workout: SizeOn
- 10 • Recovery: AminoMax 8000
- 11 • Protein Powder: MyoFusion
- 12 • Weight Gainer: REAL MASS
- 13 • Creatine: SizeOn Maximum Performance
- 14 • Branched Chain Amino Acid: AminoMax 8000
- 15 • MultiVitamin: Anavite
- 16 • Packaging: Gaspari Nutrition

17 A printout from bodybuilding.com's website listing the 2011 Supplement Awards
18 nominees is attached hereto as **Exhibit 2**.

19 13. In 2010, GNI was nominated for twenty Supplement Awards,
20 namely:

- 21 • Supplement of the Year: SuperPump250; MyoFusion (2 nominations)
- 22 • New Supplement: Anavite; SizeOn Maximum Performance (2 nominations)
- 23 • Brand Nominees: Gaspari Nutrition
- 24 • Creatine: SizeOn Maximum Performance
- 25 • Energy Supplement: Mitotropin; SuperPump250 (2 nominations)
- 26 • Fat Loss: Mitotropin; CytoLean (2 nominations)
- 27 • Intra-Workout: SizeOn Maximum Performance
- 28 • MultiVitamin: Anavite
- Muscle Builders: SuperPump250; SizeOn Maximum Performance (2
nominations)

- Nitric Oxide: SuperPump250; PlasmaJet (2 nominations)
- Pre-Workout: SuperPump250
- Protein Powder: MyoFusion
- Weight Gainer: REAL MASS
- Packaging of the Year: Gaspari Nutrition

A printout from bodybuilding.com's website listing the 2010 Supplement Awards nominees is attached hereto as **Exhibit 3**.

14. Since 2008, GNI has won at least four Supplement Awards, including Intra-Workout Supplement of the Year in 2011, Best Creatine Supplement in 2010, Breakout Brand of the Year in 2009, and Best Ads in 2008.

15. Upon information and belief, GNI and its products have been far more successful in the marketplace than ThermoLife and its products.

16. Upon information and belief, ThermoLife has never been nominated for a Supplement Award.

17. Upon information and belief, Mr. Kramer's motivation in filing the instant lawsuit against GNI was not to act as an industry watchdog, but for the improper purpose of harassing GNI, Mr. Gaspari, GNI's officers and employees, and friends, family, and acquaintances of GNI, Mr. Gaspari, and GNI's officers and employees.

Threats and Intimidation By ThermoLife

18. Since at least as early as 2008, Thermolife, through its President and CEO, Ron Kramer, has engaged in a campaign calculated to harass GNI personnel and to impugn GNI's reputation and good standing among GNI distributors, retailers, and consumers of sports supplements.

19. In 2008, GNI and ThermoLife both attended the Phoenix Pro show in Mesa, Arizona. Mr. Kramer attended with a group of men who were purportedly members of a street gang.

20. While at the show, Mr. Kramer and his entourage physically threatened Mr. Gaspari and other GNI employees.

21. These threats were calculated to disrupt GNI's business during the show, and part of an ongoing campaign of intimidation.

1 22. The goal of these threatening actions was to intimidate GNI
2 employees and their families, and thereby gain a competitive advantage over GNI by
3 distracting and upsetting GNI employees and impacting GNI's morale.

4 23. In 2008, Mr. Gaspari and Mr. Kramer communicated by e-mail. Mr.
5 Kramer complained about Mr. Pierce's postings on the bodybuilding.com forum and
6 asked Mr. Gaspari to fire Mr. Pierce for comments Mr. Pierce made about Superdrol, a
7 third party manufacturer's product, because Mr. Kramer perceived the comment as an
8 effort to "debunk me and Thermolife."

9 24. Mr. Gaspari advised Mr. Kramer that he would speak to Mr. Pierce to
10 ensure that he "would not say anything about [ThermoLife] or [its] products. . . ." A copy
11 of this e-mail correspondence is attached hereto as **Exhibit 4**. Mr. Gaspari went on to say
12 that "all this animosity toward Dan is a little bizarre and a bit scary if you ask me. I just
13 don't understand why you need him to stop talking about other products on the threads.
14 As I said, Dan has agreed to refrain from saying anything about ThermoLife or you
personally on the boards." Id.

15 25. On October 14, 2008, Mr. Kramer responded, "Fucking bitch ass
16 counterfeiting FAGGOT." Id. Again, this was a threatening comment intended to
17 intimidate Mr. Gaspari with the hope of gaining a competitive advantage over GNI.

18 26. On October 15, 2008, Mr. Kramer threatened Mr. Gaspari by writing,
19 "I will step wherever the fuck I want. Eat a dick you little bitch." Id.

20 27. On October 15, 2008, Mr. Gaspari responded, "We'll see Ron.
21 [You're] a failure because of your attitude. Everyone hates you. We'll see what
22 happens." Id.

23 28. On October 15, 2008, Mr. Kramer responded, "This from the midget
24 court jester with 3 nipples!!! LOL[.] We'll see what happens? I will take that and your
25 previous e-mail where you told me I stepped out of line as threats. NOW go fuck yourself
26 and DO NOT e-mail me again you little bitch." Id.

27 29. On or around August 18, 2008, Mr. Kramer attempted to blackmail
28 Mr. Gaspari by sending test results to Mr. Gaspari purportedly showing that the presence
of Turkesterone was not detected in GNI's SUPERPUMP 250 product.

1 30. Mr. Kramer said he would not publicize the results if Mr. Gaspari
2 agreed to purchase turkesterone from Mr. Kramer.

3 31. This constituted extortion, which is a felony offense. Mr. Kramer
4 made these threats in order to reap a benefit from GNI to which he was not entitled. Mr.
5 Kramer also made these threats in an attempt to intimidate Mr. Gaspari and GNI.

6 32. Mr. Kramer's attempt to use illegal means is unfair competition
7 because Mr. Kramer (and thereby ThermoLife) attempted to gain a profit at the expense of
8 GNI through means which are illegal and unreasonable.

9 33. On or about December 30, 2010, Mr. Kramer falsely claimed in an
10 Internet message board post published on ThermoLife's website at www.thermolife.com
11 that "Rich Gaspari is a BITCH counterfeiter and a PUNK." A copy of that post is
12 attached hereto as **Exhibit 5**.

13 34. This was another attempt by Mr. Kramer to threaten and intimidate
14 Mr. Gaspari.

ThermoLife's Publication of False and Deceptive Advertisements Concerning GNI

15 35. Since 2008, Mr. Kramer, in his capacity as President and CEO of
16 Thermolife, has regularly published false and disparaging information about GNI
17 products, Mr. Gaspari, other GNI officers and employees, and their friends, family, and
18 acquaintances, including Daniel Pierce. Mr. Kramer's false disparaging statements have
19 damaged the reputation of GNI, its officers and employees, and GNI's product line.

20 36. Mr. Kramer has published many of his false disparaging statements
21 about GNI on the message board forums on his own company's website at
22 www.thermolife.com. Mr. Kramer's posts are especially deceptive because he posts false
23 information under the screen name "Truth Speaker."

24 37. Mr. Kramer has published false statements that GNI's products,
25 including VASOTROPIN, HALODROL, and SUPERPUMP 250, are mislabeled and/or
26 underdosed. A copy of a message board post made by Mr. Kramer on or about April 6,
27 2012, containing false statements concerning GNI's VASOTROPIN product is attached
28 hereto as **Exhibit 6**. Mr. Kramer has published false and/or misleading statements that
GNI's VASOTROPIN product is ineffective because it purportedly contains less than 1

1 milligram of nitrates per tablet. Id. Mr. Kramer posted this false and/or misleading
2 statement in a message board post on ThermoLife's website at www.thermolife.com,
3 under the headline, "GASPARI selling SAW DUST???" Id. A copy of message board
4 posts made by Mr. Kramer beginning on or about January 27, 2010, containing false
5 statements concerning the alleged absence of 95% 3,4-divanillyltetrahydrofuran in any
6 dietary and nutritional supplements, including GNI's supplements, is attached hereto as
7 **Exhibit 7**. ThermoLife's postings are false because GNI supplements contain 95% 3,4-
8 divanillyltetrahydrofuran..

9 38. Mr. Kramer has published false statements that GNI's products,
10 including NOVEDEX and HALODROL, were adulterated with illegal steroids. See, e.g.,
11 ¶¶ 64-85, **Exhibit 10**. In fact, GNI has never adulterated its products with illegal steroids.

12 39. Mr. Kramer has published false statements that Rich Gaspari knows
13 nothing about dietary and nutritional supplements. See, e.g., ¶ 56, **Exhibit 9**.

14 40. These statements are false. Mr. Gaspari has decades of experience in
15 the dietary and nutritional supplement business, and has extensive experience in the
16 bodybuilding industry as both a supplement producer and as a bodybuilder.

17 41. By indicating that Mr. Gaspari has no experience in the field,
18 ThermoLife has called into question whether Mr. Gaspari is qualified to produce and sell
19 supplements.

20 42. This allegation resulted in the diversion of sales from GNI to
21 ThermoLife and other supplement companies.

22 43. In or about September 2008, Mr. Kramer published false statements
23 on various Internet message boards, including bodybuilding.com, that GNI's
24 SUPERPUMP 250 product did not contain the ingredient Turkesterone.

25 44. These statements were false – SUPERPUMP 250 did contain
26 Turkesterone. Upon information and belief, ThermoLife made these statements to cause
27 consumers to question GNI's formulations, thereby diverting sales to ThermoLife and
28 other supplement companies.

1 45. Mr. Kramer's false statements concerning the alleged absence of
2 Turkesterone in SUPERPUMP 250 gained significant publicity on Internet message
3 boards.

4 46. The statements were so damaging to GNI that Rich Gaspari was
5 compelled to respond on an Internet message board hosted at www.bodybuilding.com. A
6 copy of that message board thread is attached as **Exhibit 8**.

7 47. On or about September 3, 2008, Mr. Kramer said in response to
8 Gaspari Nutrition's post, "You posted all that to claim there is 1mg of 2% material in a 20
9 gram serving. For anyone who doesn't know that is .02 of 1 milligram of "alleged"
10 Turkesterone. If that is all you are claiming it is not even worth my time proving that
11 amount is or isnt in there. I doubt .02 milligrams of arsenic could kill a fly!

12 "Just to clarify exactly how much that is, you would have to break 1mg into 100
13 separate parts and then take 2 of those parts and that would = how much Turkesterone you
14 say is in the product.

15 "There is probably more ink in used in writing - Turkesterone (11,20
16 Dihydroxyecdysone From Ajuga Turkestanica Extract) on the label than the .02mg you
17 now claim to have in the product. If that is what you want to tell consumers it is not even
18 worth me posting anything further." Id. (Post # 76).

19 48. The statements in paragraph 47 are misleading. Upon information
20 and belief, by quantifying the amount of Turkesterone in the way ThermoLife did, this
21 created a false impression that GNI's product is not effective. Upon information and
22 belief, this has resulted in consumers questioning the quality and efficacy of GNI's
23 supplements, and has resulted in diversion of sales from GNI to ThermoLife and/or other
24 supplement companies.

25 49. On or about September 3, 2008, Mr. Kramer also made additional
26 posts on the bodybuilding.com message boards calling Mr. Gaspari a "counterfeiter," and
27 falsely stating that SUPERPUMP 250 is ineffective because it contains a small dose of
28 turkesterone. Id. (Post Nos. 160 and 162).

 50. This statement is false and deceptive. Mr. Gaspari is not a
 counterfeiter and GNI does not sell adulterated or mislabeled/misrepresented goods.

1 Stating and implying that GNI sells counterfeit goods is false and deceptive advertising.
2 Upon information and belief, this has resulted in the diversion of sales from GNI to
3 ThermoLife and other supplement companies.

4 51. On or about September 23, 2008, Mr. Kramer posted additional false
5 statements about Rich Gaspari, Gaspari Nutrition, and Gaspari Nutrition's products on his
6 company's message boards at www.thermolife.com. A copy of that post is attached hereto
7 as **Exhibit 9**.

8 52. In the September 23, 2008 post, Mr. Kramer falsely claims that
9 "Gaspari was a joke in this industry peddling protein from his garage." Id.

10 53. This statement is false. Mr. Gaspari and GNI do not operate from
11 Mr. Gaspari's garage. By stating that GNI operates from a garage is false and deceptive..
12 This implies that GNI is not a legitimate supplement company. Upon information and
13 belief, the statement has resulted in the diversion of sales from GNI to ThermoLife and
14 other supplement companies.

15 54. In the September 23, 2008 post, Mr. Kramer falsely claims that "Rich
16 [Gaspari] knows nothing about supplements." Id.

17 55. This statement is false. Mr. Gaspari knows a great deal about
18 supplements, as evidenced by GNI's impressive array of accolades and market share in
19 the supplement industry. See, e.g., First Amended Counterclaims, ¶¶ 7-14 and **Exhibits 2**
20 **and 3**. Upon information and belief, falsely stating that the owner of GNI does not have
21 knowledge about supplements has resulted in consumers questioning the quality and
22 efficacy of GNI's supplements, and has resulted in the diversion of sales from GNI to
23 ThermoLife and other supplement companies.

24 56. In the September 23, 2008 post, Mr. Kramer falsely claims that
25 Gaspari Nutrition added "EXPIRED INGREDIENTS" to its products. Id.

26 57. This is false. GNI does not use expired ingredients. By stating that
27 GNI uses expired ingredients, ThermoLife has improperly called into question the quality
28 and efficacy of GNI's products. Upon information and belief, this has resulted in
consumers questioning the quality and efficacy of GNI's supplements, and has resulted in
the diversion of sales from GNI to ThermoLife and other supplement companies.

1 58. Mr. Kramer has published false statements that no dietary and
2 nutritional supplements contain the ingredient 95% 3,4-divanillyltetrahydrofuran,
3 including GNI's HALODROL product. Mr. Kramer posted these statements in numerous
4 message board posts on ThermoLife's website at www.thermolife.com beginning on
5 January 27, 2010. See Exhibit 7.

6 59. This statement is false. Gaspari Nutrition and other producers of
7 dietary and nutritional supplements have produced supplements that do contain 95% 3,4-
8 divanillyltetrahydrofuran. Upon information and belief, this has resulted in consumers
9 questioning the quality and efficacy of GNI's supplements, and has resulted in the
10 diversion of sales from GNI to ThermoLife and other supplement companies.

11 60. Mr. Kramer has published false and/or misleading statements that
12 GNI's VASOTROPIN product is ineffective because it purportedly contains less than 1
13 milligram of nitrates per tablet. On or about April 6, 2012, Mr. Kramer posted this false
14 and/or misleading statement in a message board post on ThermoLife's website at
15 www.thermolife.com, under the headline, "GASPARI selling SAW DUST???" See
Exhibit 6.

16 61. This statement is false. GNI's products do not contain saw dust or
17 any equivalent compound. Upon information and belief, by falsely stating that GNI's
18 products contain saw dust, and thereby also implying that GNI's products do not contain
19 effective ingredients, this has resulted in consumers questioning the quality and efficacy
20 of GNI's supplements, and has resulted in the diversion of sales from GNI to ThermoLife
21 and other supplement companies.

22 62. Upon information and belief, on or about May 25, 2012, Thermolife
23 and/or its agents published a press release concerning this case titled "Federal Judge
24 Allows ThermoLife to Take SUPER DUMP on Gaspari." The release was posted on a
25 website corresponding to the domain name www.anthonyroberts.info. A copy of the press
26 release is attached hereto as **Exhibit 10.**

27 63. The placement of the May 25, 2012 press release on the
28 [anthonyroberts.info](http://www.anthonyroberts.info) site, and facts surrounding its appearance on that site demonstrate that

1 Mr. Kramer intended to use the current proceedings in a deceptive fashion to improperly
2 impugn GNI, its employees, and its products:

3 64. Anthony Roberts is an independent freestyle journalist who covers
4 the dietary and nutritional supplement industry.

5 65. Mr. Roberts has a good reputation as a journalist in the dietary and
6 nutritional supplement industry. On information and belief, Mr. Roberts has been quoted
7 in the New York Times, the New York Daily News, and peer-reviewed medical journals.

8 66. On information and belief, Mr. Roberts once operated a blog using
9 the www.anthonyroberts.info domain name.

10 67. On information and belief, Mr. Kramer unsuccessfully attempted to
11 pay Mr. Roberts to post content on his blog that was favorable to ThermoLife and/or
12 critical of other dietary and nutritional supplement companies.

13 68. On information and belief, the www.anthonyroberts.info domain
14 name was confiscated from Mr. Roberts in connection with a federal lawsuit titled
15 Dynamic Sports Nutrition v. Anthony Roberts, Civil Action No. H-09-1929, in the
16 Southern District of Texas.

17 69. On information and belief, the www.anthonyroberts.info domain
18 name is now owned by Brian Clapp, a friend of Mr. Kramer. On October 16, 2011, Mr.
19 Kramer wrote an Internet message board post on ThermoLife's website confirming that
20 Mr. Clapp owns the www.anthonyroberts.info domain name. A copy of that message
21 board post is attached as **Exhibit 11** (see p. 3).

22 70. Mr. Clapp has used Mr. Robert's name and reputation to publish
23 articles, and upon information and belief, Mr. Kramer has capitalized on this reputation to
24 file press releases for Mr. Kramer and ThermoLife, in an attempt to give legitimacy to Mr.
25 Kramer's statements.

26 71. On information and belief, Counterclaim Defendant and/or Mr.
27 Clapp, acting as Counterclaim Defendant's agent, posted the press release attached as
28 **Exhibit 10**.

1 72. On or about May 25, 2012, Mr. Kramer posted a link to the Anthony
2 Roberts blog and the press release attached as **Exhibit 10** on a message board at
3 www.modernfitnessforum.com. A copy of that post is attached as **Exhibit 12**.

4 73. The subject of Mr. Kramer's May 25, 2012 post to
5 www.modernfitnessforum.com was, "Anthony Roberts Blog is Alive Again :-)." *Id.* The
6 implication, of course, was that Anthony Roberts had resumed posting. Upon information
7 and belief, however, Mr. Clapp, someone with no standing in the bodybuilding
8 community, was posting at the direction of Mr. Kramer.

9 74. Mr. Kramer's May 25, 2012 post on www.modernfitnessforum.com
10 was a blatant, willful attempt to deceive the bodybuilding community as to the authorship,
11 authenticity, and veracity of the press release.²

12 75. Upon information and belief, Mr. Kramer posted on
13 modernfitnessforum.com so that users of that site would click the link leading to the
14 anthonyroberts.info site and read the false and deceptive press release, and believe that
15 Mr. Roberts was the author of the press release.

16 76. Moreover, the press release is false and/or misleading, and is likely to
17 deceive consumers into believing, mistakenly, that the court has ruled against GNI on the
18 merits of the case. For example, the press release states that ThermoLife's First Amended
19 Complaint "reads like a criminal indictment against Gaspari." That statement is false and
20 misleading because it gives consumers the false impression that Mr. Gaspari and GNI are
21 facing a criminal indictment.

22 77. The press release also includes improper conclusions about the case
23 which do not reflect reality.

24 78. For example, the release says, "Gaspari will now be ordered to turn
25 over all documents related to any and all advertising for Halodrol, Novadex, and Super
26 Pump 250," that "Gaspari will also be required to produce all documents sent to retailers

27 ² Mr. Kramer, ThermoLife and its attorneys also attempted to deceive the Court in their
28 briefs in support of ThermoLife's motion to dismiss Gaspari Nutrition's counterclaims,
alleging that the May 25, 2012 press release (or "Blog Post" as they called it), was
anonymous, when in fact ThermoLife was responsible for the "blog post" and attempted
to deceive consumers as to the source of the "blog post."

1 such as GNC, Vitamin Shoppe, Bodybuilding.com, etc, claiming Halodrol and Novadex
2 [sic] were natural, safe, and DHESA [sic] compliant, contrary to the ruling by the FDA,”
3 and that GNI “will now also be required to disclose all gross sales and profit on all sales
4 of Halodrol, Novadex and Super Pump 250.”

5 79. These statements are false and/or misleading because they create the
6 mistaken impression that GNI has been ordered by the court to produce documents, and/or
7 that GNI has been found liable for any of ThermoLife’s claims. Upon information and
8 belief, this has led some consumers to believe that GNI’s products were not natural,
9 unsafe, and not DSHEA compliant. This has resulted in the diversion of sales from GNI
10 to ThermoLife and other supplement companies.

11 80. The press release goes on to misleadingly claim that “[a]ny failure to
12 disclose this information could result in contempt sanctions against Gaspari Nutrition
13 and criminal charges against Mr. Gaspari personally if his company doesn’t comply with
14 the court orders.”

15 81. This statement is misleading because there is no court order, nor have
16 there been any contempt sanctions or criminal charges against GNI in this case. Plaintiff
17 is wielding the court’s order on GNI’s motion to dismiss the FAC for the improper
18 purpose of falsely disparaging the company. Upon information and belief, by implying
19 that GNI is avoiding a Court order to disclose information, and by alleging that GNI could
20 face contempt proceedings and criminal sanctions, consumers have been misled to believe
21 GNI is hiding information about its products. This has resulted in the diversion of sales
22 from GNI to ThermoLife and other supplement companies.

23 82. The press release also states, “There seems to be little doubt of these
24 facts and the law clearly states that Mr. Gaspari is not entitled to any profit he made from
25 selling these products. ThermoLife’s federal law claims also provide that if and when
26 Gaspari Nutrition is found liable, the court can award treble damages (that’s three times
27 Gaspari Nutrition’s profit earned from all Halodrol, Novadex, and Super Pump 250).”
28 These statements are false and/or misleading to the extent they suggest to consumers that
GNI has lost the case. Upon information and belief, by implying that Court-ordered
disgorgement is all but inevitable, consumers have been misled to believe ThermoLife’s

1 negative claims about GNI's products, and this has resulted in the diversion of sales from
2 GNI to ThermoLife and other supplement companies.

3 83. The press release further states, "Gaspari Nutrition's recent release of
4 poorly formulated and pixidusted products that are receiving poor reviews from customers
5 nationwide. Gasapari Nutrition who used to regularly have several products in the top 10
6 on the industry's 'top selling list' has plummeted in the rankings. With a company
7 already in trouble for a host of reasons, a substantial monetary judgment equal to three
8 times the profit on all Halodrol, Novadex [sic], and SuperPump 250 sold could easily put
9 Gasapari Nutrition out of business and could bankrupt the former bodybuilder." These
10 statements are false and misleading. Upon information and belief, this has resulted in
11 consumers questioning the quality and efficacy of GNI's supplements, and has resulted in
12 the diversion of sales from GNI to ThermoLife and other supplement companies.

13 84. GNI's products are not "pixidusted," a term which indicates
14 adulteration or misrepresentation by GNI about the composition of its products. Upon
15 information and belief, these false statements have resulted in consumers questioning the
16 quality and efficacy of GNI's supplements, and has resulted in the diversion of sales from
17 GNI to ThermoLife and other supplement companies.

18 85. Upon information and belief, to the extent GNI's products have
19 slipped in the sales rankings, such slippage is the direct result of Thermolife's campaign
20 of false advertising against GNI.

21 86. Thermolife's false statements have harmed GNI in its business and
22 have harmed GNI's reputation as one of the top distributors of dietary and nutritional
23 supplements for bodybuilders, weightlifters, and other athletes.

24 87. On or about August 3, 2012, Mr. Kramer posted a message on his
25 company's Internet message board at www.thermolife.com that a "New bill could have put
26 Gayspari in jail for up to 10 years and fined him \$2.5 million for selling the products that
27 are just part of the subject we are suing him over." A copy of that post is attached hereto
28 as **Exhibit 13** (see page 9).

88. In fact, this statement is false – the “bill” described by Mr. Kramer would not impose any criminal liability on Mr. Gaspari or GNI, because Mr. Gaspari and GNI did nothing for which criminal liability could be imposed.

89. Even if a bill were passed and under a new law GNI's conduct fell under the bill, the Court could not apply the law ex post facto to any actions undertaken by GNI prior to the passage of the new law. There simply is no way GNI could face civil or criminal liability as described in Mr. Kramer's August 3, 2012 posting.

90. Upon information and belief, this false statement was written for the purpose of branding Mr. Gaspari and GNI as a criminal enterprise. Upon information and belief, this false statement resulted in the diversion of sales from GNI to ThermoLife and other supplement companies.

91. The August 3, 2012 post also states, "Active ingredients found in both Halodrol and Novadex [sic] can be found listed among the 25 'designer steroids' listed in the new bill." Id.

92. This statement is deceptive because it implies that active ingredients found in GNI's products are "designer steroids" or akin to "designer steroids."

93. The statement is also deceptive because “designer” is a term typically used with high-end lab-produced illegal substances.

94. Upon information and belief, ThermoLife used the term “designer” so that consumers would draw a comparison between so-called “designer drugs” and GNI’s products.

95. However, GNI's products are not designer steroids nor akin to designer steroids or illegal substances, and ThermoLife's statement is false. Upon information and belief, by equating GNI's products to illegal steroids and designer drugs, sales were diverted from GNI to ThermoLife and other supplement companies.

COUNT I

**False Designations of Origin, False Descriptions,
False Advertising, And Unfair Competition – 15 U.S.C. § 1125(a)**

96. GNI restates and re-alleges each and every preceding paragraph of its Counterclaim as though fully set forth herein.

1 97. Thermolife's publication of false disparaging statements about GNI
2 and its products constitutes unfair competition, false advertising, false designation of
3 origin, and/or false description under section 43(a) of the Lanham Act, 15 U.S.C.
4 § 1125(a).

5 98. Thermolife has made false statements of fact in commercial
6 advertisements about the products of GNI.

7 99. ThermoLife has falsely claimed that SUPERPUMP 250 did not
8 contain turkesterone. See First Amended Counterclaims ¶¶ 33-38, Ex. 8.

9 100. ThermoLife has falsely claimed that SUPERPUMP 250 is not
10 effective. Id.

11 101. ThermoLife has falsely claimed that VASOTROPIN is ineffective
12 because it purportedly contains less than 1 milligram of nitrates per tablet. Id., ¶¶ 37, 60-
13 61, **Exhibit 6**.

14 102. ThermoLife has falsely claimed that HALODROL is ineffective
15 because it did not contain 95% 3,4 divanillyltetrahydrofuran. See First Amended
16 Counterclaims ¶ 58-59, **Exhibit 7**.

17 103. ThermoLife has falsely claimed that Novedex and Halodrol were
18 "spiked" with illegal steroids. See id., ¶¶ 38, 62-84, **Exhibit 10**.

19 104. ThermoLife has falsely claimed that Rich Gaspari "was a joke in the
20 industry," that Mr. Gaspari "knows nothing about supplements," that if not for Bruce
21 Kneller, Mr. Gaspari "would be a personal trainer at 24 Hour Fitness," and that Mr.
22 Gaspari is a "counterfeiter." Id., ¶¶ 54 and 56, **Exhibit 9**.

23 105. ThermoLife has falsely claimed that Gaspari Nutrition uses expired
24 ingredients in its products. Id., ¶ 56-57, **Exhibit 9**.

25 106. Thermolife's false statements actually deceived or had the tendency
26 to deceive a substantial segment of their audience.

27 107. ThermoLife's statements that SUPERPUMP 250 does not contain
28 turkesterone are literally false.

1 108. ThermoLife's statements that SUPERPUMP 250 does not contain an
2 effective dose of turkesterone are literally false and/or likely to deceive consumers.
3 Gaspari Nutrition's SUPERPUMP 250 product is an effective product.

4 109. ThermoLife's statements that VASOTROPIN is ineffective because it
5 contains less than 1 mg of nitrates is literally false and/or likely to deceive consumers.
6 Gaspari Nutrition's VASOTROPIN is an effective product.

7 110. ThermoLife's May 25, 2012 press release is literally false and/or
8 likely to deceive consumers because it falsely suggests that (a) Gaspari Nutrition has
9 already lost the case; (b) that Gaspari Nutrition has committed crimes; and (c) that Gaspari
10 Nutrition is facing financial difficulties, all under the false pretense that the release was
11 posted by an independent journalist, Anthony Roberts, when in fact it was posted by Brian
12 Clapp and ThermoLife.

13 111. Thermolife's deception is material in that it is likely to influence the
14 purchasing decision. Specifically, consumers have been deceived by ThermoLife's
15 statements. On information and belief, some believe, erroneously, that Gaspari Nutrition's
16 products are spiked with illegal steroids, and/or that Gaspari Nutrition's products are
17 mislabeled and/or underdosed. On information and belief, some believe, erroneously, that
18 Mr. Gaspari is a "counterfeiter," and/or that Mr. Gaspari is not qualified to conduct his
19 business, as a result of ThermoLife's false and malicious public statements made in
20 advertising in interstate commerce.

21 112. Thermolife caused the false statements to enter interstate commerce
22 by publishing the statements on Internet message boards that are visible to consumers of
23 dietary and nutritional supplements throughout the United States and worldwide.

24 113. GNI has incurred financial damage as a result of Thermolife's false
25 statements.

26 114. On information and belief, the financial damages suffered by Gaspari
27 Nutrition is the diversion of sales to competitors as a result of false statements made by
28 ThermoLife. Consumers who relied upon ThermoLife's false and deceptive advertising
have lost faith in Gaspari Nutrition's products. Upon information and belief, that subset of

1 consumers has purchased products offered by Gaspari Nutrition's competitors, including
2 ThermoLife.

3 115. GNI has also experienced a lessening of the goodwill associated with
4 GNI and its products.

5 116. In an industry in which reputation, word of mouth, and Internet
6 advertising and discussion are critical components of a marketing strategy, false
7 statements, such as those as by ThermoLife which serve as the basis of this
8 counterclaim, are highly detrimental to GNI's sales.

9 117. Upon information and belief, GNI has suffered damage to the
10 goodwill it has cultivated with its customer base, due to ThermoLife's false and deceptive
11 advertising.

12 118. This loss of goodwill has monetary consequences, as some customers
13 that would otherwise purchase GNI's products based upon GNI's reputation and record of
14 providing quality supplements have not purchased from GNI because of reliance upon
15 ThermoLife's false and deceptive statements.

16 119. ThermoLife's unlawful acts have caused, and will continue to cause,
17 irreparable harm to GNI, as described in the preceding paragraphs, unless ThermoLife is
18 enjoined by the Court.

19 **COUNT II**

20 **Unfair Competition Under Arizona Common Law**

21 120. GNI restates and re-alleges each and every preceding paragraph of its
22 Counterclaim as though fully set forth herein.

23 121. Thermolife represented that Counterclaimant's products were illegal,
24 mislabeled, dangerous, and ineffective without a basis in fact sufficient to validate those
25 claims.

26 122. Thermolife's representations constitute false advertising, which is
27 actionable as unfair competition under Arizona common law.

28 123. Thermolife has engaged in a campaign of threats, violence,
harassment, and attempts at public humiliation against Counterclaimant, its employees
and agents, and friends of family of Counterclaimant, its employees, and agents.

124. Thermolife's actions, referenced in the previous paragraph and described in detail in the Counterclaim, was undertaken to gain a competitive advantage over Gaspari.

125. Use of illegal means, including threats, violence, harassment, attempts at extortion, and attempts at public humiliation, constitutes unfair competition under Arizona common law.

126. By employing these means, Thermolife has acted improperly and illegally, and Thermolife is liable to injuries sustained by Gaspari as a result.

127. By reason of the foregoing acts of Thermolife, Counterclaimant has sustained, and unless enjoined will continue to sustain, substantial injury and damage.

128. Thermolife has unlawfully and wrongfully derived income and profits and has been unjustly enriched as a result of the foregoing acts.

129. Counterclaimant has no adequate remedy at law to fully compensate it for the damage Thermolife's actions have caused and will cause.

COUNT III

Trade Disparagement

130. GNI restates and re-alleges each and every preceding paragraph of its Counterclaim as though fully set forth herein.

131. As described more fully above, Thermolife has published a series of statements on its forums, in other electronic body building forums, and in other media, including through press releases indicating Counterclaimant's products are mislabeled, underdosed, adulterated, "poorly formulated", and/or "pixidusted." See First Amended Counterclaims, ¶¶ 37-38, 43-51, 60-84, **Exhibits 6, 8 and 10**.

132. Among other statements, on or around April 7, 2012, Thermolife posted on its forums a statement entitled "GASPARI selling SAW DUST???" See **Exhibit 6**. The forum posting indicated Counterclaimant "tout the benefits of nitrates and then sell you a product that contains a barley [sic] measurable dose that will certainly have ZERO EFFECT on anyone expecting to get pumped from this dose." Id.

1 3. This Court enjoin and restrain Thermolife and its agents, servants,
2 representatives, successors, assigns and all others in active concert or participation with
3 ThermoLife, during the pendency of this action and thereafter permanently from
4 committing false advertising, false designation of origin, false descriptions, unfair
5 competition, and/or any other act or making any other statement that constitutes an act of
6 false advertising, false designation of origin, false descriptions, and/or unfair competition,
7 or deceptive trade practices under federal law, common law, or the laws of the State of
8 Arizona;

9 4. This Court award damages adequate to compensate Counterclaimant
10 for Thermolife's wrongful acts of unfair competition, unfair or deceptive trade practices,
11 and trade disparagement in amounts to be determined at trial;

12 5. An accounting by Thermolife of all gains, profits, and advantages
13 derived from its wrongful acts of unfair competition, unfair or deceptive trade practices,
14 and trade disparagement;

15 6. Trebling the amount of damages awarded Counterclaimant pursuant
16 to 15 U.S.C. § 1117;

17 7. Awarding to Counterclaimant reimbursement of its attorneys' fees,
18 costs and expenses pursuant to 15 U.S.C. § 1117 and A.R.S. § 12-349;

19 8. Awarding to Counterclaimant punitive damages in an amount
20 sufficient to deter and punish Thermolife;

21 9. Awarding to Counterclaimant pre- and post-judgment interest on any
22 awards at the highest rate allowed by law;

23 10. Awarding to Counterclaimant the costs of suit incurred herein; and

24 11. Awarding to Counterclaimant such other relief as the Court may
25 deem just and proper.
26
27
28

